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ABSTRACT

This report discusses the outcomes of a study that explored states' use of extended school year (ESY) programs for students with disabilities during the summer or other periods when school is not in session. Six states were contacted to determine whether any changes had been made to their ESY programs since the inclusion of new regulations on ESY issued in 1999 and to explore other aspects of ESY services. The states included Delaware, Ohio, Utah, Massachusetts, Maryland, and Tennessee. When the results of these interviews were analyzed, a survey of all states was conducted to ascertain whether they currently collect ESY data at the state level and, if not, whether their districts keep such data in a form that would allow it to be complied for state collection. States that do collect these data were also asked to provide a copy of any state level compilations or reports. Results from the study indicate that for the most part, ESY is a district-level responsibility implemented on the basis of individual Individualized Education Program determinations for specific students. Only 13 states collect any ESY data at the state level and only 9 of those states compile any type of report. (CR)

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NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION

QUICK TURN AROUND PROJECT FORUM

OCTOBER 2000

EXTENDED SCHOOL YEAR – STATE REGULATIONS & POLICIES

By

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EC 308199

Quick Turn Around

Project FORUM

QTA – A brief analysis of a critical issue in special education

Extended School Year – State Regulations and Policies

October 2000

By Eileen M. Ahearn, Ph.D.

Background

Extended school year (ESY) is the term used to describe special programs provided for students with disabilities during the summer or other periods when school is not in session. In 1996, Project FORUM at the National Association of State Directors of Special Education issued a document that provided a brief analysis of state regulations and policies related to ESY, and discussed a variety of issues pertinent to the legal basis, eligibility, notice, timing, content and duration. Copies of regulations from 22 states were also included.

In March 1999, requirements for ESY services were included for the first time in federal regulations implementing the 1997 amendments to the Individuals with Disabilities Education Act (IDEA). The section of the IDEA regulations that covers ESY is very brief and is as follows:

§300.309 Extended school year services.

(a) General.

(1) Each public agency shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with §§300.340-300.350, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services means special education and related services that—

(1) Are provided to a child with a disability—

(i) Beyond the normal school year of the public agency;

(ii) In accordance with the child's IEP; and

(iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

(Authority: 20 U.S.C. 1412(a)(1))

In addition, there is a detailed explanation in the discussion section issued with the regulations. It states that the regulatory addition concerning ESY was "not intended to create new legal standards, but to codify well-established case law in this area." The

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requirement reflects "the longstanding interpretation of the IDEA by the courts and the Department." The right to ESY services is based on a child's entitlement to a free appropriate public education (FAPE), and determination must be made about each child's need through the individualized education program (IEP) process.

The Department of Education has not set standards for ESY, but has left that up to each state. Those standards must, however, ensure that FAPE is provided consistent with all requirements of Part B of the IDEA, and the state may not limit eligibility for ESY services to children in particular disability categories. There are no separate requirements for determining the eligibility for ESY services—this is part of the IEP team process. Although ESY must be provided in the least restricted environment, there is no requirement to create new programs as a means of providing ESY services to students in integrated settings if the public agency does not provide such services for its children without disabilities.

Methodology

As part of FORUM's Cooperative Agreement with the Office of Special Education Programs (OSEP), two activities were carried out in mid-2000 to update information on ESY practices in states.

Activity 1: Six states—three from the group included in the 1996 report, and three from the states not included in the 1996 report were contacted to determine whether any changes had been made to their ESY programs since the new regulations were issued, and to explore other aspects of ESY services. The states selected were Delaware, Ohio, Utah, Massachusetts, Maryland, and Tennessee. For each state, the State Director of Special Education was interviewed by telephone.

Activity 2: When the results of these interviews were analyzed, OSEP requested that Project FORUM survey all states to ascertain whether or not they currently collect ESY data at the state level and, if not, whether their districts keep such data in a form that would allow it to be compiled for state collection. States that do collect these data were also asked to provide a copy of any state level compilations or reports.

Activity 1 - Interview Results

Changes in state laws/regulations

All of the six states except Tennessee have completed recent changes to their state regulations related to ESY or are in the process of doing so. In all cases, the state revisions are designed to reflect the content of the new federal regulations. For some states, such as Ohio, this is a significant change because previous regulations were based on state court decisions that mandated different standards. Delaware had adopted new regulations in 1995 as the result of federal monitoring, but is now in the process of updating the content to bring them in line with the 1999 IDEA regulations.

Features of ESY programs

There are very little state-level data available from the six state education agencies (SEAs) that were contacted about the characteristics of their ESY programs. Documents were provided by two states: a report on ESY services in Delaware for the summer of 1999, and a question and answer guide on special education ESY programs from Massachusetts.

The Delaware Annual Report contains data about students who "needed and were offered" ESY services, and the number who actually participated in the summer of 1999. Information from a total of 19 school districts and two charter schools is included in the report. Data show a significant increase in the number of students who needed and were offered services over prior years, but a decline in the rate of those who actually participated. A total of 1,154 students were identified and 772 participated, resulting in a participation rate of only 67 percent of those eligible in 1999. All disability categories and grade levels were represented in the data table. Pre-K and students receiving only speech services were included in the report for the first time in 1999. The largest number of eligible and participating students were in grades K to 4. The most common service delivery method was through special education teachers and related services staff, although there was some involvement of general education teachers.

State Directors who were interviewed said that districts try to include students with disabilities in the summer activities offered for all children, at least to some degree. However, many students with disabilities need ESY services that are very specialized and differ significantly from the types of activities in general education summer programs. Some states are now offering summer programs for students who do not pass state assessments or who have not been promoted, and many students with disabilities participate in that instruction, even though it is not formally an ESY placement.

The six Directors could not speculate about any interface between those who participate in ESY programs and those who participate in alternate assessments. One Director offered the opinion that it is most likely that there would be some overlap, but it is impossible to tell since the alternate assessment is not yet fully implemented.

The State Directors who were interviewed expressed some concerns. Two of the Directors commented on the difficulty of differentiating between ESY and year-round programming. They feel there is a need to "tighten up the definition of ESY" in order to help district personnel make these distinctions. Related to this issue, Directors cited continuing problems with the criteria used for eligibility. In one state, school district personnel expressed concerns about the cost of extended services, especially when special funds provided to start a program are later withdrawn, and the resources to continue must be included in a local budget. It was also noted that all children suffer from some degree of regression over a summer vacation, and that rather than being disability-connected, regression is related more to age: younger children need more review activities to recoup past learning than do older students. Varying interpretations of these terms among districts and between public and private settings were reported.

Activity 2 - Survey Results

Responses were received from 50 states. A total of 36 states indicated that they do not collect data on ESY at the state level.[1] Of these states, only one—Washington—indicated that districts keep the data in a form that would make it possible to compile it on a state level. Many states commented that these data are kept at the local level as part of the students' IEPs and are reviewed

[1] AK, AL, AZ, CA, CO, CT, FL, GA, ID, IL, IN, IA, KS, MA, ME, MD, MI, MN, MO, MT, NE, NV, NJ, NC, ND, OH, OK, OR, PA, SD, TN, VA, VT, WA, WV, and WY.

when a district is monitored. Comments from some of these states were:

- *Illinois* collects data on the numbers of students eligible for reimbursement for summer school, but this does not include all students with disabilities who have an ESY program. No data is collected on programs or services.
- In *Iowa,* Area Education Agencies collect state data. The information management system contains a module for ESY, but it is optional and the data is not uniformly collected across the state.
- *New Jersey* collected ESY data in 1999 but the practice was then discontinued. It could be collected again, but prior notice would be needed to reinstate this element.
- *Michigan* is developing a new data system and will be able to determine how many students are in ESY through days in attendance when the system is in place.
- Respondents from *Maryland* and *Massachusetts* questioned why such data would be collected at the state level, and noted that districts would be resistant to such a new requirement.

Fourteen states indicated that they currently collect ESY data at the state level,[2] but only eight compile any type of report. Some of the states that collect ESY data at the state level but do not prepare a report added comments to their survey responses as follows:

- *Mississippi* districts submit ESY projects for approval, but the state does not compile these data at this time.
- *New Mexico* and *Wisconsin* collect data on the total number of students receiving ESY, but do not publish reports.
- *Texas* collects data on the total number of ESY contact hours provided by each district based on the individual student service log they are required to maintain.

Of the eight states that provided copies of state-level reports, six compile only basic statistical reports:

- *Arkansas* reports the number of students and amounts expended by district.
- *Hawaii* lists the number of students eligible for ESY by school.
- *Kentucky* reports the total number of students by disability on the December 1st count who received ESY.
- *New York* includes as part of its annual performance report the number receiving ESY by age group and disability with a three year comparison.
- *Rhode Island* reports the number receiving ESY by district and disability
- *South Carolina* reports the number receiving ESY by ages 3-5 and 6-21 with a five year comparison.

Two states prepare a more extensive report including statistics and analysis:

- *Delaware*: See summary of this report above.
- *Louisiana*: Extensive data on ESY have been electronically collected at the state level since 1990. The detailed report for 1998 contains seven tables and 14 charts/figures that analyze the data from numerous perspectives, including five and ten year comparisons of students eligible and served in the ESY Program by age, disability, percent of the December 1st child count, ESY eligibility criteria, placements or settings, types of service, and percent of

[2] AR, DE, HI, KY, LA, MS, NH, NM, NY, RI, SC, TX, UT, and WI.

positive outcomes by eligibility criteria. A narrative describes these data and analyzes the trends and implications. Some inconsistency in district reporting is noted, and an evaluation of the mechanism for reporting ESY data is recommended.

Concluding Remarks

For the most part, ESY is a district-level responsibility implemented on the basis of individual IEP determinations for specific students. Only 13 states collect any ESY data at the state level, and only nine of those states compile any type of report. The discussion section of the IDEA regulations contains the statement that "a high priority is being placed on monitoring states' implementation of this regulation in the next several years." This emphasis may result in future changes in state activities relative to ESY data collection.

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